



HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Alan H. Scheiner
Senior Counsel
Desk: 212-356-2344
aschine@law.nyc.gov

April 17, 2023

BY ECF

Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Nunez, et al. v. City of New York et al*, 11-cv-5845 (LTS)

Dear Chief Judge Swain:

In accordance with this Court's Order of March 13, 2023 (Dkt. 511) (the "Order"), defendants the City of New York ("City") and the New York City Department of Correction ("DOC" or "the Department") (collectively "defendants") write to provide an update regarding "the status of their continued efforts to implement reliable Intake tracking systems for new admissions and inter/intra facility transfers," as called for by the Order.

Defendants' recent efforts to enhance their implementation of reliable Intake tracking systems are detailed in the attached Declaration of Christopher Miller, DOC's Deputy Commissioner of Classification, Custody Management and Facility Operations, dated April 17, 2023 (the "Declaration"). As set forth in the Declaration, since Deputy Commissioner Miller's prior Declaration of March 20, 2023 (ECF No. 514), the Department continues to use the New Admission Dashboard (the "Dashboard") to track new admission Intake at the Eric M. Taylor Center ("EMTC") and the Rose M. Singer Center ("RMSC").

For new admission intake, the Dashboard indicates that the Department is meeting its 24-hour obligation for new admissions. The Dashboard indicates that 1,633 new male admissions were housed in EMTC during that 35-day period, an average of 47 a day. Of those, only two (0.1 percent) were housed beyond 24 hours, and the average time was 14.17 hours; excluding clock stoppages. Declaration ¶ 4. The two outliers were housed in 24 hours:49 minutes and 24 hours:20 minutes respectively. *Id.* For RMSC, the Dashboard shows 126 new admissions were housed in RMSC during the 35-day period, an average of less than four per day. Of those, none

was housed beyond 24 hours; the average time was 11.17 hours, excluding clock stoppages. *Id.*, ¶ 15.

The Department has continued its audits of the Dashboard using review of Genetech video from EMTC to compare the Dashboard data with the actual arrival and departure times of new admissions. *Id.* ¶ 6. The new audits show that there were three audits, one on March 12, 2023, one on March 27, 2023, and one on April 10, 2023. On March 12, 11 individuals were tracked. All 11 were housed within 24 hours. For all 11, the arrival time and housing time as shown on the Dashboard coincided with the arrival time and housing time obtained from Genetec footage within the 20 minute grace period. *Id.*

On March 27, 2023, eleven individuals were tracked at EMTC on March 27, and all 11 were housed within 24 hours. For all 11, the Dashboard arrival time coincided with the Genetec arrival time within 20 minutes. Five Dashboard housing times coincided with the Genetec arrival times within the 20 minutes; the other six did not. *Id.* ¶ 7. Five of the six errors on March 27 were made by the same officer; the Department determined why the errors occurred; and the officer received a corrective interview from the facility Warden. Significantly, there is no indication that the Dashboard was being "manipulated" to make non-compliant individuals appear to be compliant. *Id.* ¶ 8.

The third audit took place on April 10, 2023. Again 11 people were tracked, and all 11 were housed within the 24 hour period. For all 11, the Dashboard arrival time coincided with the Genetec arrival time within 20 minutes. For 10 of the 11, the Dashboard housing time coincided with the Genetec housing time within 20 minutes. The Dashboard housing time for the discrepant individual was one hour and 1 minute before the Genetec time housing time. *Id.* ¶ 9.

Accordingly, the audits provide strong evidence that the Dashboard tracking system is reliable as required by the Intake Tracking Clause in the Second Remedial Order, ¶ 1(1)(C). *See* Order at 8 (defining "Intake Tracking Clause").

The Department is also moving forward in tracking the Intake process when individuals are transferred between or within facilities ("inter/intra-facility transfers"). As before, the Department is using the Inmate Tracking System ("ITS") for this purpose. Since the last status report on intake tracking, a memorandum was issued to staff emphasizing that: (i) each facility is responsible to record the time an individual enters and leaves intake area in the ITS, using the bar code on the individual's accompanying card; (ii) direct oversight of the ITS tracking system is the responsibility of the assigned Captain; and (iii) the facility Warden has ultimate responsibility for intake tracking. *Id.* ¶ 10.

Unfortunately, the Department has determined that despite training the staff are not entering data in the ITS system as consistently as they should be, and therefore daily reports are not yet available. *Id.* ¶ 11. The City regrets the delay. The Department has taken several corrective measures to rectify this problem.

First, the Department has established a report that identifies inter-facility transfers on a day (say, April 10, 2023) and compares those to ITS entries for that date. If the requisite entries

are not found, the facility is alerted to the discrepancy. Two Associate Commissioners have been assigned to monitor this process. Second, the Warden of each facility will address this topic at roll calls during the next three week, and individuals who fail to enter data (or enter it improperly) will be held accountable. The Department expects to produce daily Inter/Intra facility reports in May. *Id.* Third, the Department has enlarged its inter/intra facility monitoring team from three to five officers, to provide 24/7 coverage. *Id.* ¶ 12.

Fourth, on April 10, 2023, the Department issued a memorandum directing all facilities to submit an intake report six times each day (12:00a.m., 4:00a.m., 8:00a.m., 12:00p.m., 4:00p.m., and 8:00p.m.). The Department's five-person team described above reviews those reports to determine whether any incarcerated individual is in intake too long, and expedites the movement of any person appearing on two consecutive reports. *Id.* ¶ 13.

Fifth, the Department conducted an audit of inter-facility transfers on April 11 and 12 using the four-hour reports. Using the most conservative assumptions, of the twenty-four individuals audited, only three were in intake for more than 12 hours. One individual was there at most 20 hours, and the other two were there at most 24 hours. *Id.* ¶ 14.

Sixth, each facility has been instructed to send Deputy Commissioner Miller a copy of its Intake Log Book showing that the Warden, Deputy Warden, Tour Commander (typically an Assistant Deputy Warden), and Intake Captain have made their required rounds in the intake area. Their regular presence provides oversight and sends a message about the importance of accurate data entry. *Id.* ¶ 15.

These facts, and the additional details set forth in Deputy Commissioner Miller's Declaration, show that the Department continues to take meaningful steps to comply with the Intake Tracking Clause, building on its prior significant efforts noted by the Court. *See Order at 27.*

We thank the Court for its consideration of this matter.

Respectfully submitted,

Alan H. Scheiner /s/

Alan H. Scheiner
Senior Counsel
Special Federal Litigation Division

cc: BY ECF (w/encl.)
All counsel of record